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**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

November 18, 2002

Thomas F. Mueller
Regulatory Branch Chief
Corps of Engineers
P.O. Box 3755
Seattle, WA 98124-3755

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for Maintenance Dredging of Ash Grove Loading Facility, Duwamish Waterway, Seattle, Washington (NOAA Fisheries No. WHB-02-244, COE No. 2001-1-00155)

Attention: Suzanne Skadowski

Dear Mr. Mueller:

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA). Additionally, this letter serves to meet the requirements for consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA §305(b)).

Endangered Species Act

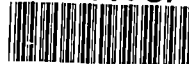
The National Marine Fisheries Service (NOAA Fisheries) has reviewed your June 19, 2002 request for concurrence with your findings of "may affect, not likely to adversely affect" for Puget Sound (PS) chinook salmon (*Oncorhynchus tshawytscha*) and the leatherback sea turtle (*Dermochelys coriacea*) for the above referenced project. This consultation with the U.S. Army Corps of Engineers (COE) is conducted under section 7(a)(2) of the ESA, and its implementing regulations, 50 C.F.R. Part 402.

According to the Biological Evaluation (BE) and additional reference material, the COE proposes to allow maintenance dredging within a ten year period. Because of the uncertainty of the impacts of future dredging, NOAA Fisheries can only concur on a single dredging action at this time. The dredging area is 130 by 30 feet (3,900 square feet) and will occur in water depths that range from -16 to -30 MLLW. Material to be removed is due to operational spillage and will be reincorporated in the cement manufacturing process. Ash Grove will be implementing improvements to their material handling equipment to reduce future operation spillage to lessen the need for future dredging.



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NOAA Fisheries has determined that it is unlikely that leatherback sea turtle would be present in the project area and therefore consider it to be a "no effect" for that species. NOAA Fisheries concurs with your findings of "may affect, not likely to adversely affect," to the Puget Sound chinook salmon because of the reasons provided in the BE and subsequent correspondence: 1) the project will be done when juvenile salmon will not be present; 2) water quality standards imposed by the Washington State Department of Ecology will be adhered to, 3) Best Management Practices (BMPs) will be employed to minimize the potential for construction related activities to affect aquatic species and their habitat, and 4) improvements to prevent future spillage will be implemented.

This concludes informal consultation on this proposed action in accordance with 50 C.F.R. 0402.14(b)(1). The COE has agreed to re-analyze this ESA consultation if there is more than one dredge activity within the ten year period. The COE must also re-analyze this ESA consultation if: (1) new information reveals effects of the action that may affect listed species in a way not previously considered; (2) new information reveals the action causes an effect to listed species that was not previously considered; or (3) a new species is listed or critical habitat designated that may be affected by the identified actions.

Magnuson-Stevens Fishery Conservation and Management Act

Federal agencies are required, under §305(b)(2) of the MSA and its implementing regulations (50 C.F.R. 600 Subpart K), to consult with NOAA Fisheries regarding actions that are authorized, funded, or undertaken by that agency that may adversely affect Essential Fish Habitat (EFH). The MSA (§3) defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." If an action would adversely affect EFH, NOAA Fisheries is required to provide the Federal action agency with EFH conservation recommendations (MSA §305(b)(4)(A)). This consultation is based, in part, on information provided by the Federal agency and descriptions of EFH for Pacific coast groundfish, coastal pelagic species, and Pacific salmon contained in the Fishery Management Plans developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce.

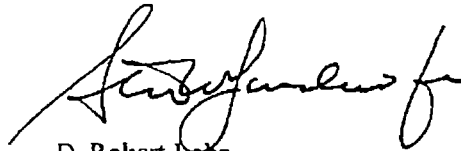
The proposed action and action area are described in the Biological Evaluation submitted by the COE. The project area includes habitat in the Puget Sound EFH composite which has been designated as EFH for various life stages of 46 species of groundfish, four species of coastal pelagics, and three species of Pacific salmon (see enclosure Table 1).

EFH Conservation Recommendations: Because the habitat requirements (*i.e.*, EFH) for the MSA-managed species in the project area are similar to that of the ESA-listed species, and because the conservation measures that the COE included as part of the proposed action to address ESA concerns are also adequate to avoid, minimize, or otherwise offset potential adverse effects to designated EFH, conservation recommendations pursuant to MSA (§305(b)(4)(A)) are not necessary. Since NOAA Fisheries is not providing conservation recommendations at this time, no 30-day response from the COE is required (MSA §305(b)(4)(B)).

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NOAA Fisheries' EFH conservation recommendations, the COE will need to reinitiate consultation in accordance with implementing regulations for EFH at 50 C.F.R. 600.920(k).

The efforts by the COE and Ash Grove Cement Company to design this project to minimize environmental impacts are appreciated. If you have any questions, please contact Shandra O'Haleck, of my staff, at (360) 753-9533.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Robert Lohn", written in a cursive style.

D. Robert Lohn
Regional Administrator

cc: Jay Spearman, Agent

Table 1. Species of fishes with designated EFH occurring in Puget Sound.

Groundfish Species	redstripe rockfish <i>S. proriger</i>	Dover sole <i>Microstomus pacificus</i>
spiny dogfish <i>Squalus acanthias</i>	rosethorn rockfish <i>S. helvomaculatus</i>	English sole <i>Parophrys vetulus</i>
big skate <i>Raja binoculara</i>	rosy rockfish <i>S. rosaceus</i>	flathead sole <i>Hippoglossoides elassodon</i>
California skate <i>Raja inornata</i>	roughey rockfish <i>S. aleutianus</i>	petrale sole <i>Eopsetta jordani</i>
longnose skate <i>Raja rhina</i>	sharpchin rockfish <i>S. zacentrus</i>	rex sole <i>Glyptocephalus zachirus</i>
ratfish <i>Hydrolagus colliei</i>	splitnose rockfish <i>S. diploproa</i>	rock sole <i>Lepidopsetta bilineata</i>
Pacific cod <i>Gadus macrocephalus</i>	striptail rockfish <i>S. saxicola</i>	sand sole <i>Psettichthys melanostictus</i>
Pacific whiting (hake) <i>Merluccius productus</i>	tiger rockfish <i>S. nigrocinctus</i>	starry flounder <i>Platichthys stellatus</i>
black rockfish <i>Sebastes melanops</i>	vermillion rockfish <i>S. miniatus</i>	arrowtooth flounder <i>Atheresthes stomias</i>
bocaccio <i>S. paucispinis</i>	yelloweye rockfish <i>S. ruberrimus</i>	
brown rockfish <i>S. auriculatus</i>	yellowtail rockfish <i>S. flavidus</i>	Coastal Pelagic Species
canary rockfish <i>S. pinniger</i>	shortspine thornyhead <i>Sebastolobus alascanus</i>	anchovy <i>Engraulis mordax</i>
China rockfish <i>S. nebulosus</i>	cabezon <i>Scorpaenichthys marmoratus</i>	Pacific sardine <i>Sardinops sagax</i>
copper rockfish <i>S. caurinus</i>	lingcod <i>Ophiodon elongatus</i>	Pacific mackerel <i>Scomber japonicus</i>
darkblotch rockfish <i>S. crameri</i>	kelp greenling <i>Hexagrammos decagrammus</i>	market squid <i>Loligo opalescens</i>
greenshaped rockfish <i>S. elongatus</i>	sablefish <i>Anoplopoma fimbria</i>	Pacific Salmon Species
Pacific ocean perch <i>S. alutus</i>	Pacific sanddab <i>Citharichthys sordidus</i>	chinook salmon <i>Oncorhynchus tshawytscha</i>
quillback rockfish <i>S. maliger</i>	butter sole <i>Isopsetta isolepis</i>	coho salmon <i>O. kisutch</i>
redbanded rockfish <i>S. babcocki</i>	curlfin sole <i>Pleuronichthys decurrens</i>	Puget Sound pink salmon <i>O. gorbuscha</i>